2004

State of Utah v. Kayla Butler : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	**Case No. 20040317-CA**
v.	:	
KAYLA BUTLER,	:	
Defendant/Appellant.	:	

BRIEF OF APPELLEE

Appeal from denial of defendant's motions to withdraw guilty pleas to distribution of a controlled substance, a second degree felony, in violation of Utah Code Ann. § 58-37-8(1)(a)(ii) (Supp. 2003); possession of a controlled substance, a third degree felony, in violation of Utah Code Ann. § 58-37-8(1)(a)(i) (Supp. 2003); and, driving with any measurable controlled substance in the body, a class B misdemeanor, in violation of Utah Code Ann. § 41-6-44.6 (Supp. 2002), in the Fourth Judicial District Court, Juab County, the Honorable Donald J. Eyre presiding

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

STATE STATUTES AND RULES

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	**Case No. 20040317-CA**
v.	:	
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BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

Defendant appeals from the denial of her motions to withdraw guilty pleas to distribution of a controlled substance, a second degree felony, possession of a controlled substance, a third degree felony, and driving with any measurable controlled substance in the body, a class B misdemeanor. This Court has jurisdiction under Utah Code Ann. § 78-2a-3(2)(e) (2002).

ISSUE ON APPEAL AND STANDARD OF REVIEW

Should this Court reject defendant's claim that the trial court erred in denying her motions to withdraw her guilty pleas where her factual allegations have no evidentiary support in the record and her four-sentence argument contains no legal authority or analysis?

No standard of review applies to this issue.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Utah Code Ann. § 77-13-6 (2003) provides, in relevant part:

> A plea of guilty or no contest may be withdrawn only upon leave of the court and a showing that it was not knowingly and voluntarily made.

STATEMENT OF THE CASE AND RELEVANT FACTS[1]

Defendant was charged in district court case number 031600093 with one count of possession of methamphetamine with intent to distribute in a drug-free zone, a first degree felony; one count of possession of drug paraphernalia in a drug-free zone, a class A misdemeanor; and one count of driving with any measurable controlled substance in the body, a class B misdemeanor (R. 093:1-2). At the preliminary hearing, one witness, Wes Dudley, testified (R. 093:14-15). Defendant was bound over on all charges (R. 093:14-15).

Defendant was charged in district court case number 031600186 with one count of offering to distribute methamphetamine in a drug-free zone, a first degree felony; one count of possession of methamphetamine in a drug-free zone, a second degree felony; one count of possession of marijuana in a drug-free zone, a class A misdemeanor; and one count of possession of drug paraphernalia in a drug-free zone, a class A misdemeanor (R.

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[1]Defendant's appeal is a consolidation of appeals from two district court cases: Case No. 031600093 and Case No. 031600186. For citation purposes, the pleadings in Case No. 031600093 will be identified in the State's brief by: R. 093; the record in Case No. 031600186 will be identified by R. 186. The only transcript included in the record on appeal, which is part of Case No. 031600093, will be identified as R. 093:86.

186:1-4). At the preliminary hearing, three witnesses, including a Jeffery Gregg, testified (R. 186:24-25). Defendant was bound over on all charges (R. 186:24-25).

On February 3, 2004, defendant entered into plea agreements concerning Case No. 031600093, Case No. 031600186, and two other cases (R. 093:60-61; R. 186:28-29, 33-38; R. 093:86:4).[2]

In Case No. 031600093, the information was amended, and defendant pleaded guilty to possession of a controlled substance, a third degree felony, and driving with any measurable controlled substance in the body, a class B misdemeanor (R. 093:1-2, 60-61). As part of the agreement, the State apparently agreed to dismiss the remaining count and not to object to a statutory reduction in defendant's drug possession conviction if she completed probation with no violations (R. 093:60-61).

In Case No. 031600186, the information was amended, and defendant pleaded guilty to distribution of a controlled substance, a second degree felony (R. 186:28-29). As part of the agreement, the State apparently agreed to dismiss the remaining counts and not to object to two statutory reductions in defendant's conviction if she completed probation with no violations (R. 186:28-29).

On or about February 20, 2004, defendant filed motions to withdraw her guilty pleas in both cases, asserting that her pleas were not knowing and voluntary because she did not know at the time of their entry that a witness at one of her preliminary hearings,

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[2]Both the State, in its response to defendant's withdrawal motions, and the trial court, during argument on the motions, referred to four cases settled by defendant's pleas (R. 186:33-38; R. 093:86:4).

Jeffery Greg, was under the influence of drugs when he testified (R. 093:62-64; R. 186:30-32).

In response, the State, in addition to addressing the merits of defendant's claim, noted that "the plea in the current case was part of a global plea resolution to resolve all . . . of the Defendant's pending cases" (R. 186:34). Thus, the State argued, if defendant was allowed to withdraw her plea in one case, "all pleas on all of the Defendant's cases should be vacated and all cases reinstated against the Defendant" (R. 186:34).

After brief argument, the trial court denied defendant's motions (R. 093:80-81; R. 186:57-58). In its oral ruling, the trial court stated:

> Well, the court took those pleas, [and] other than your allegation that Mr. Greg was under the influence of drugs at the time he testified, I think there's clearly sufficient other evidence, even if that was the case to establish the crime that she ultimately plead [sic] guilty to.
>
> . . . Even if the court took it for true that Mr. Greg was under the influence of drugs at the time he testified, I don't think that should make any difference whether or not she voluntarily and knowingly entered a plea to the charges she plead [sic] to. It only effected [sic] one case to begin with and there are four cases.

(R. 093:86:4).

Defendant timely appealed the trial court's rulings in both cases (R. 093:71-72, 78-79; R. 186:45-46, 52-53). This Court consolidated the cases on appeal (R. 093:83; R. 186:59).

SUMMARY OF THE ARGUMENT

Defendant claims that the trial court improperly denied her motions to withdraw her guilty pleas. However, defendant's factual allegations in support of her claim have no evidentiary support in the record. Moreover, defendant's argument contains no legal authority or analysis establishing that her allegations, even if proven, would render her pleas unknowing and involuntary. Thus, this Court should reject defendant's claim both because the record is inadequate to reach it and because the claim is inadequately briefed.

ARGUMENT

THIS COURT SHOULD REJECT DEFENDANT'S CLAIM THAT THE TRIAL COURT ERRED IN DENYING HER MOTIONS TO WITHDRAW HER GUILTY PLEAS WHERE HER FACTUAL ALLEGATIONS HAVE NO EVIDENTIARY SUPPORT IN THE RECORD AND HER FOUR-SENTENCE ARGUMENT CONTAINS NO LEGAL AUTHORITY OR ANALYSIS

Defendant claims that the trial court improperly denied her motions to withdraw her guilty pleas where she did not know at the time she entered them that a witness against her at one of her preliminary hearings was under the influence of drugs when he testified. Aplt. Br. at 4. Defendant's claim fails because it has no evidentiary support in the record below and because it is inadequately briefed on appeal.

A. This Court should reject defendant's claim where she presented no evidence below to support it.

"Parties claiming error below and seeking appellate review have the duty and responsibility to support their allegations with an adequate record." *State v. Wetzel*, 868 P.2d 64, 67 (Utah 1993); *State v. Penman*, 964 P.2d 1157, 1162 (Utah App. 1998).

"Thus, the appellant has the burden of providing the reviewing court with an adequate record on appeal to prove his allegations." *Call v. City of West Jordan*, 788 P.2d 1049, 1052 (Utah App. 1990) (citing *Broberg v. Hess*, 782 P.2d 198, 201 (Utah App. 1989)); *accord State v. Wulffenstein*, 657 P.2d 289, 293 (Utah 1982). "[S]peculative assignments of error not supported by the record do not constitute grounds for reversal." *State v. Gonzales*, 2002 UT App 256, ¶ 20, 56 P.3d 969 (citing *State v. Kirkwood*, 2002 UT App 128, 47 P.3d 111).

In the court below, defendant moved to withdraw her guilty pleas based on her contention that one witness at the preliminary hearing in one of four cases resolved by her pleas was under the influence of drugs when he testified (R. 093:62-64; R. 186:30-32). At the hearing on her motions, however, defendant failed to present any evidence to support her claim, even after the trial court specifically stated, "I don't know, you know, whether [the witness] was under the influence" (R. 093:86:5).

On appeal, defendant claims that the trial court erred in denying her motions. Aplt. Br. at 4. However, the allegations supporting her claim—that a witness at her preliminary hearing was under the influence of drugs and that the State was aware of that fact before she entered her plea—still have no evidentiary support in the record.[3]

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[3]Thus, although defendant alleges that "[t]he subsequent search and testing found the confidential informant was under the influence of a controlled substance when he testified," defendant cites only to a discussion between her counsel and the trial court concerning defendant's withdrawal motions. Aplt. Br. at 3 (citing Tr. p. 4, ll. 16-20; p. 5, ll. 3-15). Similarly, despite her allegation that, "[e]ven though the prosecutor knew these facts at the time the plea was entered, the state never disclosed this important information to the defense," defendant again cites only to her counsel's general argument on her

Because defendant never presented evidence below to support her motions to withdraw, her claim on appeal that the trial court erred in denying those motions is nothing more than a "speculative assignment[] of error not supported by the record." *Gonzales*, 2002 UT App 256, ¶ 20. As such, her claim "do[es] not constitute grounds for reversal." *Id.*

B. This Court should reject defendant's claim where she provides no legal authority or analysis on appeal to support it.

Rule 24(a)(9), Utah Rules of Appellate Procedure, provides that a defendant's brief "shall contain . . . citations to the authorities, statutes, and parts of the record relied on." Utah R. App. P. 24(a)(9). Under this rule, "a reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository in which the appealing party may dump the burden of argument and research." *State v. Gomez*, 2002 UT 120, ¶ 20, 63 P.3d 72 (quoting *State v. Bishop*, 753 P.2d 439, 450 (Utah 1988) (citation and internal quotation marks omitted)); *see also State v. Honie*, 2002 UT 4, ¶ 67, 57 P.3d 977 (rejecting inadequately briefed claim in death penalty case), *cert. denied*, 537 U.S. 863 (2002); *State v. Bisner*, 2001 UT 99, ¶ 46 n.5, 37 P.3d 1073.

Thus, "[i]mplicitly, rule 24(a)(9) requires not just bald citation to authority but development of that authority and reasoned analysis based on that authority." *State v. Thomas*, 961 P.2d 299, 305 (Utah 1998); *see also State v. Wareham*, 772 P.2d 960, 966 (Utah 1989). "'This Court will not engage in constructing arguments out of whole cloth

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withdrawal motions. Aplt. Br. at 4 (citing Tr. p. 3, ll. 18-25).

on behalf of defendants . . . .'" *State v. Arguelles*, 2003 UT 1, ¶ 125, 63 P.3d 731 (quoting *State v. Lafferty,* 749 P.2d 1239, 1247 n. 5 (Utah 1988)).

Consequently, when the appellant fails to present any relevant authority, this Court will "decline to find it for him." *State v. Pritchett*, 2003 UT 24, ¶ 12, 69 P.3d 1278. Similarly, "[w]hen a party fails to offer any meaningful analysis, [this Court will] decline to reach the merits." *State v. Garner*, 2002 UT App 234, ¶ 12, 52 P.3d 467. In fact, "Utah courts routinely decline to considered inadequately briefed arguments." *State v. Bryant*, 965 P.2d 539, 549 (Utah App. 1998); *see also State v. Norris*, 2001 UT 104, ¶ 28, 48 P.3d 872; *State v. Sloan*, 2003 UT App 170, ¶ 13, 72 P.3d 138.

Defendant's entire argument on appeal consists of four sentences. *See* Aplt. Br. at 4. Only the first, which sets forth the truism that "a guilty plea cannot be entered unless it is knowingly and voluntarily entered," contains any citation to legal authority. Aplt. Br. at 4 (citing Utah R. Crim. Pro. 11(e); *State v. Trujillo-Martinez*, 814 P.2d 596 (1991)). Thus, defendant provides no legal authority to support her specific claim, let alone analysis of the facts of this case based on that authority. *See* Aplt. Br. at 4; *see also Pritchett*, 2003 UT 24, ¶ 12 (holding that when appellant fails to present any relevant authority, this Court will "decline to find it for him"); *Gomez*, 2002 UT 120, ¶ 20 (stating "a reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository in which the appealing party may dump the burden of argument and research") (citation omitted and internal quotation marks omitted); *Thomas*, 961 P.2d at 305 (holding rule 24 requires not only citation to legal authority but

"development of that authority and reasoned analysis based on that authority"); *Arguelles*, 2003 UT 1, ¶ 125 (holding this Court simply "'will not engage in constructing arguments 'out of whole cloth' on behalf of defendants'" (citation omitted)).

Consequently, defendant's claim is inadequately briefed, and this Court should reject it. *Norris*, 2001 UT 104, ¶ 28; *Sloan*, 2003 UT App 170, ¶ 13; *Bryant*, 965 P.2d at 549.

CONCLUSION

Based on the foregoing, the State asks this Court to affirm the trial court's denials of defendant's motions to withdraw her guilty pleas.

RESPECTFULLY SUBMITTED 24 November 2004.

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CERTIFICATE OF MAILING

I certify that on 24 November 2004, I caused to be mailed, by U.S. Mail, postage prepaid, two accurate copies of this ***BRIEF OF APPELLEE*** to James K. Slavens, Post Office Box 752, Fillmore, Utah 84631, Attorney for Defendant/Appellant.

Karen A. Klucznik